

**Senator Todd Weiler** proposes the following substitute bill:

**CAUSE OF ACTION FOR MINORS INJURED BY PORNOGRAPHY**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Keven J. Stratton

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**LONG TITLE**

**General Description:**

This bill amends the Judicial Code to provide for a cause of action for minors injured by pornography.

**Highlighted Provisions:**

This bill:

- ▶ enacts definitions;
- ▶ provides exemptions;
- ▶ establishes liability;
- ▶ provides a safe harbor; and
- ▶ addresses damages and class actions.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-6-2100**, Utah Code Annotated 1953

**78B-6-2101**, Utah Code Annotated 1953



26 [78B-6-2102](#), Utah Code Annotated 1953  
27 [78B-6-2103](#), Utah Code Annotated 1953  
28 [78B-6-2104](#), Utah Code Annotated 1953

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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section [78B-6-2100](#) is enacted to read:

32 **Part 21. Cause of Action for Minors Injured by Pornographic Material**

33 **[78B-6-2100](#). Title.**

34 This part is known as "Cause of Action for Minors Injured by Pornographic Material."

35 Section 2. Section [78B-6-2101](#) is enacted to read:

36 **[78B-6-2101](#). Definitions.**

37 As used in this part:

38 (1) "Minor" means an individual less than 18 years of age.

39 (2) "Pornographic material" means material that:

40 (a) the average person, applying contemporary community standards, finds that, taken  
41 as a whole, appeals to prurient interest in sex;

42 (b) is patently offensive in the description or depiction of nudity, sexual conduct,  
43 sexual excitement, sadomasochistic abuse, or excretion; and

44 (c) taken as a whole does not have serious literary, artistic, political, or scientific value.

45 Section 3. Section [78B-6-2102](#) is enacted to read:

46 **[78B-6-2102](#). Exemptions.**

47 (1) If the conditions of Subsection (2) are met, this part does not apply to:

48 (a) the following, as defined in the Communications Act of 1934, as amended:

49 (i) an interactive computer service;

50 (ii) a telecommunications service, information service, or mobile service, including a  
51 commercial mobile service; or

52 (iii) a multichannel video programming distributor;

53 (b) an Internet service provider;

54 (c) a provider of an electronic communications service;

55 (d) a distributor of Internet-based video services;

56 (e) a host company as defined in Section [76-10-1230](#); or

57 (f) a distributor of electronic or computerized game software that users manipulate  
 58 through interactive devices.

59 (2) This part does not apply to an entity described in Subsection (1) if:

60 (a) the distribution of pornographic material by the entity occurs only incidentally  
 61 through the entity's function of:

62 (i) transmitting or routing data from one person to another person;

63 (ii) providing a connection between one person and another person; or

64 (iii) providing data storage space or data caching to a person;

65 (b) the entity does not intentionally aid or abet in the distribution of the pornographic  
 66 material; and

67 (c) the entity does not knowingly receive from or through a person who distributes the  
 68 pornographic material a fee greater than the fee generally charged by the entity, as a specific  
 69 condition for permitting the person to distribute the pornographic material.

70 Section 4. Section **78B-6-2103** is enacted to read:

71 **78B-6-2103. Liability -- Safe harbor.**

72 (1) A person who predominately distributes or otherwise predominately provides  
 73 pornographic material to  $\hat{H} \rightarrow$  ~~another person~~ consumers  $\leftarrow \hat{H}$  is liable to  
 73a  $\hat{H} \rightarrow$  ~~the~~ a  $\leftarrow \hat{H}$  person if:

74 (a) at the time the pornographic material is viewed by the person, the person is a minor;  
 75 and

76 (b) the pornographic material is the proximate cause for the person being harmed  
 77 physically or psychologically, or by emotional or medical illnesses as a result of that  
 78 pornographic material.

79 (2) Nothing in this part affects any private right of action existing under other law,  
 80 including contract.

81 (3) Notwithstanding Subsection (1), a person who distributes or otherwise provides  
 82 pornographic material is not liable under this section if the person who distributes or otherwise  
 83 provides pornographic material:

84 (a) provides a warning that:

85 (i) is conspicuous;

86 (ii) appears before the pornographic material can be accessed; and

87 (iii) consists of a good faith effort to warn persons accessing the pornographic material

88 that the pornographic material may be harmful to minors; and

89 (b) makes a good faith effort to verify the age of a person accessing the pornographic  
90 material.

91 (4) Subsection (3) may not be interpreted as exempting a person from complying with  
92 Title 13, Chapter 39, Child Protection Registry.

93 Section 5. Section **78B-6-2104** is enacted to read:

94 **78B-6-2104. Damages -- Class action.**

95 (1) If a court finds that a person violates Section [78B-6-2103](#), the court may award the  
96 plaintiff:

97 (a) actual damages; and

98 (b) punitive damages, if it is proven that the person targeted minors.

99 ~~Ĥ→ (2) In an action brought under this part, the court may award the prevailing party~~  
100 ~~attorney fees and costs.~~

101 ~~—— (3)] (2) ←Ĥ~~ A class action may be brought under this part in accordance with Utah Rules of  
102 Civil Procedure, Rule 23.